

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSE VILLOCH,

Petitioner

V.

**SUPERINTENDENT OF THE STATE
CORRECTIONAL INSTITUTE AT
HUNTINGDON, ATTORNEY GENERAL
OF PENNSYLVANIA**

Respondents

No. 3:05cv60

(Judge Munley)

MEMORANDUM

Presently before the Court for disposition is Magistrate Judge Thomas M. Blewitt’s Report and Recommendation (Doc. 5) proposing that we transfer Petitioner Jose Villoch’s (“Petitioner”) petition for writ of habeas corpus to the United States District Court for the Eastern District of Pennsylvania (“Eastern District”). Petitioner has filed objections, arguing that transfer is unnecessary and would serve only to delay resolution of his case. After careful consideration, we disagree and will adopt Magistrate Blewitt’s Report and Recommendation.

Background

Petitioner, an inmate at the State Correctional Institute at Huntingdon, Huntingdon, Pennsylvania, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on January 10, 2005. He is currently serving a sentence for life in prison without parole for his June 4, 2001 conviction for Murder in the Second Degree and Murder in the Third Degree, which he challenges in the instant petition. His conviction and sentence were imposed in Berks County Pennsylvania, which is located in the Eastern District. The alleged murder

occurred in Reading Pennsylvania, which is also in Berks County. Petitioner argues that he is entitled to habeas relief because his trial counsel was ineffective for failing to employ an alibi defense despite the availability of a witness who would testify that he was with Petitioner at all times in Reading Pennsylvania during the time of the murder. He further alleges that the Berks County Court of Common Pleas improperly prevented him from advancing his ineffective assistance claim in a petition pursuant to the Post Conviction Relief Act, 42 PA. CONS. STAT. §§ 9541-46.

Jurisdiction

We have jurisdiction pursuant to 28 U.S.C. 2241, which states, “Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.”

Standard

In disposing of objections to a magistrate’s report and recommendation, the district court must make a *de novo* determination of those portions of the report to which objections are made. 28 U.S.C. § 636 (b)(1)(C); see also Henderson v. Carlson, 812 F.2d 874, 877 (3d Cir. 1987). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions. Id.

Discussion

Magistrate Blewitt recommends that we transfer this case to the Eastern District in the

interests of convenience pursuant to 28 U.S.C. § 2241(d).

Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

28 U.S.C. § 2241(d).

Magistrate Blewitt reasons that the records of the conviction, transcripts of the proceedings, witnesses, and prosecution and defense counsel are located within the Eastern District. Petitioner objects to the transfer, arguing that he is incarcerated in the Middle District, and his evidence and witnesses are in Wilkes Barre, Pennsylvania in the Middle District.

After a careful review of Petitioner's objections as well as his petition, we find that transfer to the Eastern District is appropriate. In his objections, Plaintiff claims that all of his witnesses are located in the Middle District. His petition for writ of habeas corpus belies this assertion. In his petition, he argues primarily that his counsel was ineffective for failing to call an alibi witness. Both the attorney as well as the alibi witness are located in the Eastern District. The alibi witness, David Gonzalez, in fact, has filed a verified statement attached to Petitioner's petition for writ of habeas corpus asserting that he lives in Reading Pennsylvania, located in the Eastern District. Thus, his central witnesses, trial records and transcripts, and

PCRA records, are all in the Eastern District. See Dunn v. Vaughn, No.CIV.A.02-5907, 2003 WL 23199933, at *1 (E.D. Pa. Aug. 27, 2003) (transferring habeas petition from the Eastern District where the petitioner was incarcerated to the Middle District where he was convicted because the records pertinent to his habeas challenge were more readily available in the Middle District). Therefore, we will adopt Magistrate Blewitt's Report and Recommendation and will transfer this petition.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSE VILLOCH,	:	No. 3:05cv60
Petitioner	:	
	:	(Judge Munley)
v.	:	
	:	
SUPERINTENDENT OF THE STATE	:	
CORRECTIONAL INSTITUTE AT	:	
HUNTINGDON, ATTORNEY GENERAL	:	
OF PENNSYLVANIA	:	
Respondents	:	

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ORDER

AND NOW, to wit, this 20th day of April 2005, it is hereby **ORDERED** that:

- 1) Magistrate Judge Thomas M. Blewitt's Report and Recommendation (Doc. 5) is **ADOPTED**;
- 2) Petitioner Jose Villoch's petition for writ of habeas corpus (Doc. 1) is hereby **TRANSFERRED** to the United States District Court for the Eastern District of Pennsylvania.
- 3) The clerk of court is directed to close this case in this district.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court